

Sullivan, Long & Hagerty and Billy Blazer.
Boilermakers Local Lodge 108 and Billy Blazer.
 Cases 10-CA-23837 and 10-CB-5310

July 31, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On November 21, 1990, Administrative Law Judge Lawrence W. Cullen issued the attached decision. Respondent Employer and Respondent Union filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this case to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs¹ and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that Respondent Sullivan, Long & Hagerty, West Jefferson, Alabama, its officers, agents, successors, and assigns, and Respondent Boilermakers Local Lodge 108, Midfield, Alabama, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondent Employer has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² Both Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Additionally, we correct the following errors the judge made in the section of his decision entitled "The Alleged Unfair Labor Practices" regarding the dates of certain events: in par. 2, LL. 6 and 7, the judge stated that "in June and July of 1987," whereas the correct year was 1988; in the following line the judge stated that there were layoffs on "June 24, July 1 and July 6, 1988," whereas the third layoff actually occurred on July 8; in the fifth paragraph, second line, the judge stated that Blazer's referral occurred in "August 1988," whereas the correct year was 1986; in the following line the judge stated that Ted Gerrard became union steward in "December of 1988," whereas the correct year was 1987; and, finally, in the same paragraph, L. 16, the judge stated that Gerrard "approached [Blazer] in January 1989," whereas the correct year was 1988. We find that these misstatements do not affect our ultimate conclusions here.

³ We agree with the judge that Respondent Employer's refusal to rehire Billy Blazer in October 1988 was "inextricably intertwined" with its earlier discriminatory layoff of Blazer in July 1988 that the Union caused. Because we adopt the judge's finding of a violation on this ground, we do not rely on the judge's further discussion regarding whether the Respondent Employer unlawfully decided not to rehire Blazer after learning of Blazer's alleged protected concerted activities at other jobsites.

Victor A. McLemore, Esq., for the General Counsel.
Sidney F. Frazier Jr., Esq. and *David B. Walston, Esq.* and
William K. Thomas, Esq. (*Cabanis, Johnston, Gardner,*

Dumas & O'Neal), of Birmingham, Alabama, for Respondent Sullivan, Long & Hagerty.

George C. Longshore, Esq. (*Longshore, Nakamura & Quinn*), of Birmingham, Alabama, for Respondent Boilermakers Local Lodge 108.

Carol Rasmussen, Esq., of Birmingham, Alabama, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard by me at Birmingham, Alabama, on September 25, 26, and 27, 1989, pursuant to an amended consolidated complaint filed by the Regional Director of Region 10 of the National Labor Relations Board (the Board) on July 11, 1989, and is based on a second amended charge in Case 10-CA-23837 and a second amended charge in Case 10-CB-5310 both filed on June 26, 1989, by Billy Blazer, an Individual (the Charging Party). The complaint alleges that the Respondent Boilermakers Local Lodge 108 (the Union or the Boilermakers or Local Lodge 108) attempted to cause and caused the layoff by the Respondent, Sullivan, Long & Hagerty (the Employer or Sullivan, Long & Hagerty or SL&H) of the following named employees: Billy Blazer, Joseph Ballard, Hugh Gaines, Denford Harper, John Mason, Ricky Mayfield, Gordon Neeley, Danny Romine, Lewis E. Stillwell, David Young, Randy Renninger, Ricky Rutherford, James Stone, Gerald Teat, Euel Miller, Eddie Monk, and Wayne McCarty because of their engagement in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) and that SL&H laid off and refused to recall the aforesaid employees because of their engagement in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection in violation of Section 8(a)(3) and (1) of the Act. The complaint further alleges that SL&H on or about October 24, 1988, refused to "recall" (sic) "rehire" employee Billy Blazer because of his engagement in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection in violation of Section 8(a)(3) and (1) of the Act. The complaint is joined by the answer of Local Lodge 108 filed on July 21, 1989, and by the answer of Sullivan, Long & Hagerty filed on July 28, 1989, wherein both Respondents deny the commission of any violations of the Act.

On the entire record, including my observations of the demeanor of the witnesses, a review of the documentary evidence, and after due consideration of the arguments made at the hearing by the parties and after due consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, Respondents admit, and I find that Sullivan, Long & Hagerty is, and has been at all times material, an Alabama corporation with an office and place of business located at West Jefferson, Alabama, where it is engaged in construction services and that during the calendar year preceding the filing of the complaint, Respondent Sullivan, Long & Hagerty performed services valued in excess of

\$50,000 for customers located within the State of Alabama, who in turn during the same period of time purchased and received at their Alabama locations goods valued in excess of \$50,000 direct from suppliers located outside the State of Alabama and that Sullivan, Long & Hagerty is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondents admit, and I find that at all times material, the Union is, and has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Layoffs*

The Miller Steam plant is a major electric power plant near West Jefferson, Alabama, which is owned by Alabama Power Company (APCO) and has been under construction since the mid-1970s. SL&H has for many years been the prime labor contractor for APCO and has the responsibility for manning and supervising the construction of the four generating units which make up the Miller Steam plant. Manpower levels are controlled by APCO and SL&H utilizes various construction craft unions to meet the construction manpower level needs and SL&H has employed and supervised over 1000 employees from over 15 craft unions in meeting this responsibility.

Billy Blazer has been a member of the Union for 14 years and had been referred to SL&H by the Union and worked for SL&H at the Miller Steam plant on several occasions. In August 1986, Blazer was referred to SL&H at the Miller Steam plant as a high rigger. In December 1987, Blazer was transferred from his position as a high rigger to the position of welder helper. In June and July 1987, SL&H laid off several employees in three separate layoffs occurring on June 24, July 1 and 6, 1988. The General Counsel contends certain of the employees laid off on June 24, on July 1 in addition to Blazer who was also laid off on that date, and on July 22 were supporters of Blazer in his intraunion political rivalry with the incumbent officers and delegates of the Union whom Blazer had opposed in the past. The General Counsel contends that the layoffs of Blazer and his supporters were politically motivated as a result of Blazer's engagement in internal union politics and the Union's current leadership's retaliation against them and were thus violative of the Act. Blazer was politically active in Local Lodge 108 and had held several positions including president, delegate, and alternate delegate to the District Convention. There are four locals in the Gulf Coast District and each local sends two delegates to the District Convention. The delegates select the Gulf Coast District business agent who appoints an assistant business agent for each of the locals. In the spring 1988, Blazer and member Joe Ballard ran for a delegate position to the District Convention. John Bagley and Assistant Business Agent for Local Lodge 108 Jimmy Dickinson ran on a slate for the delegate positions and campaigned for the incumbent District Coast Business Manager Harold Creel whereas Blazer and Ballard did not support Creel.

Blazer had previously filed a complaint with the Department of Labor over the results of an election for president which he had lost. This complaint was dismissed by the De-

partment of Labor when the Union agreed to hold a second election which Blazer also lost. Additionally Blazer previously had filed charges against Dickinson with the International Union alleging that Dickinson had conducted an illegal gambling operation at Local 108 offices. Dickinson subsequently filed charges against Blazer with the International Union alleging that the charges filed by Blazer against him were politically motivated and calculated to and had the effect of costing Dickinson his then-current campaign for election of secretary-treasurer which he lost. Both charges were dismissed by the International.

The Union operates an exclusive hiring hall and furnishes SL&H with employees from among its members. SL&H, as the prime contractor has the responsibility for building the precipitator and condenser at the Miller plant. APCO determines the number of employees then currently needed among the various crafts utilized by SL&H to perform under its construction contract to build the power plant equipment described above and SL&H makes the selection of employees referred to it by the Union or specifically called for by it from the Union. Layoffs are common as jobs near completion. Alabama Power declares the need for a layoff and SL&H decides which particular employees will be laid off in heavy reliance on the general foreman or area foreman and various crew foremen all of whom are also members of the Union. Typically the general or area foreman asks the foremen of the individual crews to rank their men with the best employee ranked first while the lowest rated employee is ranked last. The general foreman then reviews these lists and he and the SL&H representative (assistant superintendent) confer and a list is developed by the general foreman and approved by the SL&H representative.

As noted above Blazer had most recently been referred to the Miller Steam plant job for SL&H by the Union in August 1988 as a high rigger. In December 1988, Business Manager Jimmy Dickinson sent member Ted Garrard as a union steward. According to the testimony of Blazer, which I credit over Garrard's denial, Garrard approached Blazer and told him that he was sent there to protect Dickinson's interest, that Blazer had been "bad-mouthing" Dickinson, that he (Garrard) was a Viet Nam veteran, and that if Blazer didn't like it, he could step off the plant premises and they would settle any differences. Garrard also told Blazer that he understood that Blazer campaigned on the job and that if he were caught campaigning he would be fired. In January 1988, the crew that Blazer was working on was disbanded and Blazer was sent to another crew to work as a welder's helper with no loss in pay. According to Blazer's testimony which I credit over Garrard's denial thereof, Garrard approached him in January 1989 and called him down from the high rigging work he was doing and told him he was being reassigned to the welding crew and when Blazer began to protest, Garrard told Blazer that if he didn't like it he could leave. Additionally the Union's assistant business manager, Jimmy Dickinson, wrote a letter to the Union Local's membership dated March 26, 1988, concerning his and member Johnny Bagley's election campaign for "delegates to the Gulf Coast District Lodge and as delegates to re-elect Harold M. Creel, Gulf Coast District Business Manager." In this letter in referring to Billy Blazer and Joe Ballard, both of whom were also running for the position of delegates to the convention, Dickinson stated,

These men all worked at 100% full pay from the first day worked, and was on the "Primary" or "A" Out-of-Work List, but are the first to yell about some Trainees, or other sub-journeymen. They say we need a change, but in truth they need a change from Miller Steam Plant, West Jefferson, Alabama. They need to come out on a few outages for 3 or 4 years, and see how the rest of the Local lives.

On several occasions in the spring of 1988, General Foreman Kenneth Jinright told Blazer and other members of the Union that Area Foreman James Bates and the Union's leadership were watching Blazer and his supporters and wanted to get rid of them. Additionally, members Gerald Teat and Denford Harper testified concerning remarks made by Union Steward Ted Garrard concerning Blazer while riding to work together, in the spring of 1988, during the campaign for delegates. Teat testified that Garrard stated on the way to work in reference to Blazer "That redhead, if he passed another letter, then he would be gone." Teat also testified that Garrard referred to Blazer as an agitator. Denford Harper testified Garrard stated in April 1988 while riding to work with Harper and Teat that "Blazer was scheduled to be laid off in the next layoff, and it would give him a lot of pleasure to walk up to him and tell him that." Member Hugh Gaines testified that in late June 1988, he inquired of Union Steward Garrard as to who would be on the next layoff and that Garrard responded that he did not know as Dickinson's stepson, Tony Graham, had not brought the list out to the jobsite from Dickinson. I credit both Teat's and D. Harper's testimony over Garrard's denial. Members John Mason and Hugh Gaines also testified that in July 1988, when Mason inquired of Garrard as to who made up the layoff list, Garrard replied "Jimmy Dickinson, Jimmy Bates, and Kenneth Jinright." I credit Mason's and Gaines' testimonies over that of Garrard who denied making these statements. Additionally Jinright testified that on several occasions Garrard spoke disparagingly of Blazer at foremen meetings which he had been permitted to attend although normally the union steward was not permitted to attend such meetings and that Garrard stated that Blazer was "politicking" on the job which Blazer's foreman, Ron Harding, denied in a heated exchange. Blazer also testified that he was warned by his foreman Ron Harding that Garrard was watching him and had told him that Blazer was politicking on the job which Harding had disputed. Harding denied at the hearing that he had made these statements. However I credit Blazer's testimony that he did make these statements and engaged in arguments with Garrard concerning Blazer. I do not credit Harding's denial nor that of Garrard. Member Gerald Hargett testified he was told by Jinright to stay away from Blazer as Blazer and his supporters were being watched and that Area Foreman Bates was out to get rid of the Blazer supporters. This case is concerned with layoffs which occurred in June and July 1988. The evidence shows that there were three layoffs ordered by APCO in June and July and that during these layoffs both Blazer and Dickinson supporters were laid off. Jinright testified that while there is no seniority provision in the contract, seniority on the job is considered as a factor among others such as the ranking and absenteeism in making up the final layoff list and excused absences.

There is a dispute between the witnesses as to the identity of several of the alleged discriminatees as Blazer supporters. At the outset there was substantial evidence presented through the testimony of Blazer, Jinright, and members Mason and Gaines that the Blazer supporters were open in their support of Blazer at the plant site and were generally known. In addition to Blazer's identification of the alleged discriminatees as his supporters, John Mason who had seconded Blazer's nomination for delegate, also testified that the discriminatees were Blazer supporters. He identified Hugh Gaines, Denford Harper, Ricky Mayfield, Gordon Neeley, Danny Romine, Lewis Stillwell, Randy Renninger, Ricky Rutherford, Jim Stone, Euel Miller, and Wayne McCarty as Blazer supporters but was unable to identify David Young or Gerald Teat as Blazer supporters. Teat testified that he did not discuss whom he supported with others. Teat, a long-term employee on the job, testified he had a substantial amount of absenteeism (about 2 weeks) as a result of a child custody case but that Assistant Superintendent Ron Gartman had told him not to worry about it as he (Teat) worked on the job and Gartman knew what he was going through. Jinright also testified that whereas they had normally looked beyond the numbers of days absent in the past and considered the reason, this did not occur in Teat's case although Bates was aware of the reason for Teat's absences and Jinright regarded Teat's absences as being justified under the circumstances. Denford Harper testified he actively supported Blazer and Ballard for delegates to the District convention with other employees and his foreman. Denford Harper testified that Danny Romine was a Blazer supporter. Danny Romine testified that he had seconded the nomination of Blazer for president in Blazer's race against Johnny Bagley in 1987 and had told Blazer that he was supporting him in Blazer's campaign for delegate in 1988 although he did not actively campaign for Blazer in 1988. After his layoff, Romine discussed his layoff with Jinright who told him the layoff came from higher up. Previously in early June Jinright had observed Romine talking to Blazer and told him that "it might be a good idea to stay away from Billy Blazer because they're watching him" or "they're out to get him." Romine acknowledged having been a member of a crew that had worked under Foreman Warren Misso and had been split up with the crew divided among other foremen and that there had been rumors that the split up of the crew was drug related and rumors that members of the crew had been smoking marijuana. After his layoff he was referred back out to SL&H for employment and was rehired after Dickinson spoke on his behalf concerning the reasons his crew had been split up. Romine testified that Gordon Neeley, David Young, and Wayne McCarty were Blazer supporters. Ted Garrard told him he was being laid off. Lewis E. Stillwell testified that he spoke "with a lot of people concerning my support for Mr. Blazer," including union officers or stewards and including delegate candidate Bagley and Steward Garrard. He had been assigned to Misso's crew until shortly before his layoff when he was transferred to another crew. Stillwell testified that David Young, and Wayne McCarty, were Blazer supporters.

Jinright testified that during his employment with SL&H he had never known of any problems with Blazer's job performance and that Blazer's immediate foremen's work reports of Blazer were "always satisfactory." Ronald Harding

was Blazer's immediate foreman after Blazer was transferred to his crew as a welding assistant. Jinright testified that on one occasion Garrard complained to him about Blazer "politicking on the job" but before he (Jinright) could check into it, Foreman Harding came into the office and he and Garrard "got into a heated discussion" about it and Harding told Garrard to let him "do his foreman's job" and that "Blazer wasn't politicking on the job." Jinright identified Hugh Gaines, Denford Harper, John Mason, Danny Romine, Lewis Stillwell, Ricky Rutherford, Jim Stone, Gerald Teat, Euel Miller, and Eddie Monk as open Blazer supporters in the 1988 delegate campaign who would "tell you about Blazer and wanted you to vote for him." He also identified William Hargett and Ricky Rutherford as Blazer supporters.

Prior to the layoff of Blazer, Jinright talked to Joe Ballard, Joe Cain, Gerald Hargett, Danny Romine, "several people on the job" and "told them to stay away from Billy because he was under the gun down there to be laid off." He told these employees that Jimmy Bates and Ted Garrard wanted Blazer off the job and testified at the hearing that, "It was very open." Foreman Harding came to Jinright and told him that Blazer "didn't need to be laid off cause he was doing his job." Jinright had four or five conversations with Blazer from the latter part of March through June in which he warned him to stay on the job and "do not be politicking because Ted [Garrard] and Jimmy [Bates] wanted him off the job." Garrard's responsibility was "supposed to be protecting the people; not getting them laid off." Jinright overheard a conversation in June prior to the layoff between John Mason and Ted Garrard wherein Mason asked Garrard who was going to be on the layoff and Garrard said he didn't know as he had not yet received the list from Tony Graham (Dickinson's stepson). Jinright testified that although stewards do not normally attend foremen meetings, he observed Garrard "sitting in on every one that he was there, I reckon, until he was asked to leave" by "the Power Company people" because he brought up Blazer's name and every time he did, he and Foreman Harding "would get into a heated discussion." Garrard would say that "Blazer was out politicking again." Jinright further testified that Area Foreman Bates prohibited all union "politicking" on the jobsite.

Jinright testified he made the decision to lay off Euel Miller because of absenteeism and his work record and that Wayne McCarty's absenteeism was a factor in his layoff. Jinright testified that although Gerald Teat had accumulated some absenteeism, Teat had talked to Bates and Jinright about it and that they were aware of his involvement in a child custody case which required him to travel to Florida and that this was regarded as an excused absence. Jinright also testified that when Bates took over as area foreman he told Jinright that he was going to make the decisions to hire and fire and that, whereas prior to Bates assuming the role of area foreman, he (Jinright) had obtained a ranking of each crew from the foremen and made the selection based on the ranking in conjunction with any other information he had regarding absenteeism or job performance, this procedure changed after Bates took over. Thereafter, Bates had his own list of employees to be laid off and told Jinright whose names to put on the layoff list. Jinright would then fill in the rest of the names to reach the designated number of employees to be laid off. In all cases the number of employees to be laid off was set by APCO. Jinright testified that with

regard to the June 2 layoff, Richard (Ricky) McCarty was laid off because of absenteeism and that he agreed with this as McCarty had a bad record. Jinright does not recall any discussion about Gordon Neeley but acknowledged he had been a member of the Misso crew which had been suspected of smoking marijuana. He testified that Assistant Superintendent Gartman said to get rid of him because he was a troublemaker in reference to the suspected drug usage. Richard Rutherford had been a foreman who was put back to welding as part of a crew in the condenser and was not working for him at the time and Jinright had no input into his layoff and does not recall any discussion about him. Lewis Stillwell had worked in the crew led by Foreman Misso that was split up shortly before this layoff. Jinright had split the crew up because APCO wanted employees "hanging" so Jinright split up Musso's crew and established a "hanging" crew to do this work. David Young was not working for Jinright at the time of this layoff and Jinright did not recall any discussion of Young at this time when he was put on the layoff list.

With respect to the layoff of July 1, 1988, Jinright testified Euel Miller was laid off because of work-related problems and he had input into Miller's selection for layoff during the meeting with Bates and Gartman to select employees for this layoff. Bates also said Miller should be laid off because of his work record. Billy Burton's name was brought up by Gartman and when Jinright inquired as to whom he meant, Bates said he means Billy Blazer and Blazer's name was put on the layoff list. Prior to this, Union Steward Garrard had stated he wanted Blazer laid off. Bates also had said Blazer was "politicking on the job." Bates had earlier stated at a safety meeting that anyone caught "politicking" on the job will be fired. However, when Union Steward Garrard was caught with Dickinson stickers on his hat he was not discharged but rather reprimanded by Bates who had him take the sticker off. He believes that Ricky Mayfield was laid off on July 1 because he was an apprentice as since there was a layoff of journeymen, it was necessary to lay off an apprentice. Randy Renninger's name was put on the layoff list by Bates because he was one of the last employees hired in and Jinright did not disagree with this because although seniority is not a part of the labor agreement, it is normally accorded some weight.

On the layoff of July 8 the first name on the list was Joe Ballard whose name was given to Jinright by Bates. Jinright testified that Ballard was a wire gun welder and APCO was putting welders on the job. Jinright asked Bates why he was laying Ballard off and Bates said "I want him off the job." The name of Hugh Gaines was also given to Jinright by Bates who told Jinright "to get him off the job."

On the July 22 layoff Bates gave Jinright the name of Denford Harper but there was no other discussion concerning the reason for the inclusion of his name on the list. Harper's foreman Steve Speed was upset when he found out that Harper was on the layoff list as he needed him in his crew. Bates also gave Jinright the name of John Mason and contended that Mason was a troublemaker and stayed out of his work area. Jinright sometimes observed Mason out of his work area but his foreman Ron Harding supported Mason as doing his work and contended he had no complaint if Mason went to the restroom or got a drink of water when he was out of his work area. Bates put the name of Edward E. Monk

on the layoff list and contended he did so for absenteeism. However, Jinright testified that Monk had had a lot of deaths in the family and relatives in the hospital and brought in excuses and Jinright regarded these as excused absences. Bates went by APCO's absenteeism records but Bates was aware of the reasons for the absences in Monk's case. Gartman had little or no input into the layoff decisions on most occasions. Jinright testified that Danny Romine's name was given to him by Gartman as having been in the crew with suspected drug usage. When Jinright spoke on Romine's behalf, Gartman said he (Romine) was in the wrong place at the wrong time. Bates did not say anything about Romine. The name of James Stone, an apprentice, also appears on the layoff list. Stone and Bates had had an argument previously and Bates gave Jinright Stone's name. Gerald Teat's name also appears on the layoff list by Bates and his absenteeism was discussed although Jinright felt he had a valid excuse because of his involvement in a child custody case. Jinright heard Garrard and Bates discussing a layoff a month or two before Teat and Denford Harper were laid off and Garrard said that it would be nice if Teat and Harper were laid off because they were Blazer supporters and troublemakers. Jinright testified that Teat and Harper were not troublemakers and their foremen spoke well of them and Jinright had personally observed their work. Jinright also testified that prior to the layoff of Blazer, Bates told him, "We need to get rid of Blazer because he's downtown trying to get your job too, Kenneth." Bates also said that Blazer was paying Jinright to stay on the job which Jinright denies.

Jinright testified that according to his paperwork and that of the civil office they were ahead of schedule in August 1988 on the precipitator for which he had responsibility. On June 24, 1988, they were keeping up with the schedule. Garrard came to Jinright personally and said they needed to get rid of Blazer. Bates did say that troublemakers were people with high absenteeism and people who were standing around talking. Jinright agreed with the number of people laid off but did not agree with the timing of the layoffs.

Jinright's affidavit states that he advised Gerald Hargett, John Mason, and Jim Stone to be careful and stay in their own work area. Gartman and Bates had told him the three above employees were troublemakers and he does not recall what it was about them that Gartman and Bates said made them troublemakers. They did not say anything about Blazer when they told him but his name was coming up often. He is now sure that he told other boilermakers to stay away from Blazer. He never asked Blazer about Bates' statement that Blazer was out to get his job.

Assistant Business Manager Dickinson identified Blazer, Hugh Gaines, Denford Harper, John Mason, Lewis Stillwell, James Stone, Gerald Teat, and Edward Monk as Blazer supporters in his affidavit. He made no notation by David Young or Randy Renninger in his affidavit. He doesn't know about Wayne McCarty but felt Romine might vote one for him and one for Blazer in the delegate race as Romine had told him this. Joe Ballard has run against both Dickinson and Blazer. He felt that Ricky Mayfield and Gordon Neeley supported him (Dickinson). Euel Miller and he are good long-time friends. Ricky Rutherford has always talked negatively of Blazer and positively of Dickinson. After complaints concerning the layoffs by Ballard, Blazer, and Mason and the filing of a grievance by Blazer, Dickinson talked to the fore-

men who said they made a list of their men (best to last) and gave it to Jinright. He also talked to Jinright and Bates who both said Jinright made the layoff. Dickinson testified he has never said anything to a general or area foreman or had any input into a layoff except where another employer wanted a man as a foreman or a man had personal problems and requested a layoff. Jinright told him he had made up the layoff list and put Blazer on the list and that no one else had anything to do with it.

Garrard testified he has been in and out of the office and Bates would tell Jinright the number of men to lay off and Jinright would make up the list and hand it to Bates who would turn it into the office and give it to Garrard. He testified he never made recommendations for layoff except that the out of towners be laid off first. Similarly Bates and Gartman contended that Jinright had made the layoffs. Gartman testified he told Bates and Jinright to lay off the members of the Misso crew suspected of drug use.

Analysis

I find the General Counsel has made a prima facie case that the layoffs of Blazer and his supporters in June and July 1988 were based in part on their engagement in internal union politics which are clearly protected concerted activities under the Act. I find that the animus toward Blazer and his supporters has been established. I credit Blazer concerning the hostile manner in which he was initially greeted by Garrard when Garrard was appointed as a union steward and that Garrard told him he was there to protect Assistant Business Agent Jimmy Dickinson's interest and that he challenged Blazer to step off the property at the time to settle their differences. I also credit the testimony of Teat and Harper concerning the threats of discharge of Blazer issued by Garrard to them. I also find that Dickinson's statement in his campaign letter that his opponents, Joe Ballard and Billy Blazer in the delegate election need to come out on a few outages for a few years to see how the other half of the local lives was a clear threat of reprisal by removing them from the Miller Steam Power Plant job. I also credit Romine who testified that General Foreman Jinright had told him to stay away from Blazer as Blazer supporters would go any day and I credit Jinright that Garrard, as a union steward, was allowed to attend foremen's meetings where he disrupted the meetings by calling for the layoff of Blazer prompting an angry response from foreman Harding who defended Blazer. I also credit Jinright's testimony that Area Foreman Bates made adverse comments about Blazer's "politicking" on the job although Jinright had not observed any specific instances of it. I also credit employees Mason's and Gaines' testimony that Garrard told them that Dickinson's stepson had not yet brought out the list of men to be laid off and that the layoffs were made by Dickinson, Bates, and Jinright. I also find significant Dickinson's denial at the hearing of his close relationship with Area Foreman Bates whereas in his affidavit he acknowledged that he and Bates are close personal friends and do not credit Dickinson's denial of this friendship at the hearing. I also credit Jinright's testimony that at the time of the layoffs Bates basically made the decision and that Jinright merely copied down what Bates dictated. I also credit Jinright's testimony that Assistant Plant Superintendent Ron Gartman called out the name of Billy Burton and Bates said no he means Billy Blazer.

All the above establishes a prima facie case that the layoff of Blazer and his supporters were motivated by the union leadership's desire to retaliate against Blazer and his supporters for their engagement in internal union politics and were caused by Dickinson and carried out by SL&H's area foreman Bates, a fellow union member and close friend of Dickinson's, and were acquiesced in and carried out by Assistant Superintendent Ron Gartman both of whom were agents of SL&H.

In making credibility determinations, I have considered the detailed testimony of several of the witnesses called by the General Counsel concerning the various statements attributed to Garrard by them and found this testimony, convincing and credible. I also considered the testimony of Jinright and found him to be a credible witness. Although I recognize that he was terminated as a general foreman by SL&H and was not a current dues paying member of the Union at the time of the hearing and that he had in the past owed Blazer money in the sum of \$200 borrowed as the result of a family emergency and, at the time of the hearing, owed Blazer \$50, I did not find these matters to affect his credibility. In my observation of Jinright on the stand I noted no evidence of hostility on the part of Jinright to either of the Respondents. Rather I found Jinright to be a low key witness who testified in a forthright manner and did not attempt to embellish his testimony but willingly conceded matters brought out on cross-examination that may have been adverse to the General Counsel's case. I am thus convinced that Jinright was in all respects a truthful witness.

In making a determination as to the unlawful motivation of Union Assistant Business Agent Dickinson in suppressing opposition, it appears to the undersigned and I infer from Blazer's credited testimony concerning Garrard's initial approach to him on Garrard's arrival at the jobsite as a steward on behalf of the Union who was there to protect Dickinson's interest and from Dickinson's letter to the membership wherein he specifically mentioned Blazer and Ballard as his opposition at the power plant construction site, and from Jinright's testimony concerning the openness of the support for Blazer that this site was perceived by Dickinson and his supporters as a hotbed of opposition with substantial support for Blazer and Ballard. Although I credit the testimony of Gartman that the precipitator was regarded as a problem area with attendance and production problems, it is also clear that the "politicking" curtailed by Bates in the safety meeting appeared primarily to relate to "politicking" by candidates who opposed Dickinson and his supporters. Thus, the initial directive of Bates to refrain from "politicking" on the job under fear of discharge appeared to lose resolve when Garrard wore a sticker on his hard hat in support of Dickinson. While it may well be that Bates was not active politically within the Union's internal political circle, I do find that he and Dickinson are close personal friends and that the facts and circumstances in this case give rise to a reasonable inference that Bates was swayed to aid in the suppression of opposition to Dickinson by selecting known or perceived Blazer supporters for layoff. I also find that although Gartman may have had no interest in the Union's internal politics, he acceded to the recommendations of Bates who, as an agent of Respondent SL&H, developed his own list for layoff based on discriminatory motives in retaliation for opposition to Dickinson and his supporters. I also credit the tes-

timony of Union Steward Donald Patterson that in October 1988 in the craft foreman's office, he overheard Bates say in the presence of Dickinson that he would wait until later to put in a call for additional employees for the condenser as Blazer's name was on the top of the out-of-work list, as Blazer might go elsewhere because other jobs were breaking. I also credit the testimony of Jinright that a month or two prior to the layoff of Harper and Teat he heard Garrard tell Bates that it would be nice if Harper and Teat were "gone" because they were Blazer supporters. All the foregoing convinces me that the "politicking" referred to by Garrard and Bates was largely, if not exclusively, concerned with "politicking" on behalf of supporters of opposition to Dickinson and Bagley for the delegate election.

With respect to the various defenses raised by the Respondents I find that certain of them have merit. I find based on Jinright's testimony that Euel Miller was laid off because of his attendance and that Wayne McCarty was laid off because of his attendance and work record and that James Stone and Richard Mayfield were laid off because of their status as apprentices which dictated their layoff prior to that of journeymen. I also credit the testimony of Assistant Plant Superintendent Gartman, as supported by Jinright, Bates, and Dickinson, that he had given orders that all former members of Foreman Misso's crew should be laid off because of suspected drug usage by the crew and that Danny Romine, Lewis Stillwell, and Gordon Neeley would have been laid off even in the absence of their protected activities. I also credit Jinright that Randy Renninger was laid off because he had been one of the last employees hired. I also find that the evidence of Mayfield's support of Blazer in the election has been rebutted by Mayfield's own testimony that he did not campaign for anyone in the delegate election, did not express to Blazer or Dickinson or anyone his preference for any candidate in the delegate election, and does not believe that union politics played any role in his layoff. I also credit Stone's testimony that he was not a supporter of Blazer and note that he does not believe his layoff was the result of his participation in internal union politics. I find, however, that the remaining defenses with respect to the other discriminatees raised by the Respondents have failed to establish that these layoffs would have occurred in the absence of the unlawful motive.

I accordingly find that the Respondent Union and the Respondent SL&H have failed to rebut the prima facie case established by the General Counsel by the preponderance of the evidence except as set out above and have failed to persuasively demonstrate that Blazer and his supporters would have been laid off in the absence of their protected internal union activities in the delegate election campaign. *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).

B. The Refusal to Rehire Blazer

The complaint also alleges that SL&H violated Section 8(a)(1) of the Act by its refusal to rehire Blazer on October 24, 1988. When Blazer was laid off on July 1, 1988, he received a separation notice that stated that he would be considered for rehire. Blazer subsequently heard a rumor that he would not be rehired and contacted SL&H General Super-

intendent Charles Browning and wrote him and the Union on the same date inquiring whether this was true. Browning told him he was not aware of any "not for rehire" status of Blazer. On checking Browning testified he learned that there was a note at the guard gate to the construction entrance that Blazer should not be let in which had been put there at the direction of Assistant Plant Superintendent Ron Gartman shortly after Blazer's layoff when Gartman heard that Blazer was coming out to the plant site to see Gartman to protest his layoff and that Gartman had put the note at the guardhouse as he was busy and unable to see Blazer but had neglected to remove it.

Browning further testified that when he received Blazer's September 8, 1988 letter inquiring of his rehire status with a copy to Blazer's attorney, he began to inquire about Blazer. Browning testified he learned that Blazer had been involved in a wildcat strike at Reynold's Aluminum in the early 1970s and the men had lost a lot of time, that Blazer had passed out union campaign literature to other employees at Babcock and Wilcox, another construction contractor, and that he learned from Area Foreman Bates that Blazer had carried a tape recorder on the jobsite. He also testified that the current general foreman over the precipitator told him that his men did not want Blazer back on the job as he was disruptive. He further testified that Blazer had called Alabama Power Manager Bob Willshire at home several years ago and had asked that Willshire put him on the job although such selection is normally made by SL&H after referral by the Union. Blazer initially denied knowing Willshire at the hearing but subsequently admitted knowing him after Willshire testified about this incident. Browning testified that he accordingly decided he did not need any more trouble on the job and he refused to rehire Blazer when he was referred out again by the Union in October 1988 and assigned as the reason therefor Blazer's work habits and his attitude on the job. It is undisputed that although Blazer had worked at the Miller plant site for several years and for SL&H on several occasions, he had never been disciplined in any way by SL&H.

Analysis

I find that the General Counsel has established a prima facie case that Respondent SL&H refused to rehire Blazer because of his engagement in protected concerted activities. Initially I find that the refusal to rehire is inextricably intertwined with SL&H's unlawful layoff of Blazer in July and his efforts to ensure that he was not barred from further employment particularly in light of his having been listed at the guard gate as having been barred from the construction property. Moreover it is clear that the reasons relied on by Browning at the hearing demonstrate that Browning refused to rehire Blazer because of his union activities including the alleged "wildcat strike," the passing out of union literature, the carrying of a tape recorder on the jobsite which Blazer testified he did in connection with a Department of Labor investigation into union election irregularities. There was no evidence presented by the Respondent that any of these activities of Blazer were in fact unprotected or violated any of Respondent's valid policies or that Blazer had ever been disciplined for them. Rather, it is clear that Browning viewed these activities with disdain and chose not to rehire Blazer because of them and assigned as the reason therefor a vague

assertion that Blazer was not being rehired because of his attitude and work practices on the job.

As the General Counsel notes in his brief, a concerted work stoppage for the purpose of protesting undesirable working conditions is protected activity under Section 7 of the Act, citing *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962). See also *Betts Baking Co. v. NLRB*, 380 F.2d 199 (10th Cir. 1967). Thus, under all the circumstances I find that the Respondent SL&H has failed to rebut the prima facie case of a violation of Section 8(a)(1) of the Act. See *Wright Line*, supra; *Roure Bertrand*, supra; *NLRB v. Transportation Management*, supra.

CONCLUSIONS OF LAW

1. Respondent Sullivan, Long & Hagerty is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Boilermakers Local Lodge 108 is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Boilermakers Local Lodge 108 violated Section 8(b)(1)(A) and (2) of the Act by attempting to and causing Respondent Sullivan, Long & Hagerty to lay off employee Billy Blazer and his supporters Joseph Ballard, Hugh Gaines, Denford Harper, John Mason, Ricky Rutherford, Gerald Teat, Eddie Monk, and David Young.

4. Respondent Sullivan, Long & Hagerty violated Section 8(a)(3) and (1) of the Act by laying off the employees named above.

5. Respondents did not violate the Act by the layoff of employees Danny Romine, Lewis E. Stillwell, Gordon Neeley, Euel Miller, Ricky Mayfield, Randy Renninger, James Stone, and Wayne McCarty.

6. Respondent Sullivan, Long & Hagerty violated Section 8(a)(1) of the Act by refusing to rehire Blazer because of his engagement in protected concerted activity under Section 7 of the Act.

7. The above unfair labor practices have the effect of burdening commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents have violated the Act, they shall be ordered to cease and desist therefrom, and to take certain affirmative actions, including the posting of an appropriate notice, designed to effectuate the purposes of the Act. Respondent Boilermakers Local Lodge 108 shall inform the Respondent Sullivan, Long & Hagerty in writing that it is not requesting the layoff of Billy Blazer and his supporters and send a copy of such letter to each of the aforesaid employees, and notify each of them in writing that their protected concerted internal union activities will not be used against them in any manner. Respondent Sullivan, Long & Hagerty shall be ordered to rescind the unlawful layoffs and the "not for rehire" order with respect to employee Billy Blazer and to offer Billy Blazer employment to the position to which he was referred in October 1988 or to a substantially equivalent position if that position no longer exists and expunge its files of the layoff notices to the employees and the unlawful "not for rehire" order against Billy Blazer and advise the employees in writing that this has been done and inform Blazer that the unlawful "not for rehire" order will not be used against him in the future. The other

discriminatees shall also be restored to their former positions if they exist or to substantially equivalent ones if they exist and shall be advised in writing thereof that their unlawful layoffs will not be used against them in any manner. Blazer and each of the employees found to have been discriminated against shall be made whole jointly and severally by the Respondents for any loss of wages or benefits sustained by them as a result of their unlawful layoffs. Blazer shall be made whole for any loss of wages or benefits by Respondent Sullivan, Long & Hagerty as a result of the unlawful refusal to rehire Blazer in October 1988. Backpay and benefits shall be with interest, as computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

A. Respondent Boilermakers Local Lodge 108, Midfield, Alabama, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Attempting to cause and causing the layoff of Billy Blazer and his supporters because of their engagement in internal union politics or other protected concerted activities.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Inform the Respondent, Sullivan, Long & Hagerty, in writing that it is not requesting the layoff of employee Billy Blazer and his supporters and send a copy of this letter to each of the aforesaid unlawfully laid-off employees and notify each of the above discriminatees in writing that their engagement in internal union politics and other protected concerted activities will not be used against them in any manner.

(b) Make whole jointly and severally with Respondent Sullivan, Long & Hagerty, its members Billy Blazer, Joseph Ballard, Hugh Gaines, Denford Harper, John Mason, Ricky Rutherford, Gerald Teat, Eddie Monk, and David Young for all wages and benefits sustained by them with interest in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all referral records and other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its business office and meeting places copies of the attached notice marked "Appendix A."³ Copies of the notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent Union's authorized representative, shall be posted by Respondent Union

at its business office immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this order what steps it has taken to comply.

B. Respondent Sullivan, Long & Hagerty, West Jefferson, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off its employees because of their engagement in internal union politics or other protected concerted activities.

(b) Refusing to hire employees because of their engagement in internal union politics or other protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its unlawful layoff of employees Billy Blazer, Joseph Ballard, Hugh Gaines, Denford Harper, John Mason, Ricky Rutherford, Gerald Teat, Eddie Monk, and David Young and offer them full reinstatement to their former positions or to substantially equivalent positions if they exist and jointly and severally with Respondent Boilermakers Local Lodge 108 make them whole for all loss of wages and benefits sustained by them, with interest, as set out in the remedy.

(b) Offer to hire Billy Blazer to the position for which he was referred to said Respondent Sullivan, Long & Hagerty by the Respondent Union in October 1988, or to a substantially equivalent position if this position no longer exists, and make him whole for all loss of wages and benefits sustained by him with interest as set out in the remedy.

(c) Remove from its files any reference to the unlawful layoffs of the discriminatees above and to the unlawful refusal to hire Billy Blazer and inform each of them respectively in writing that this has been done and that the unlawful layoffs and in the case of Billy Blazer, also the unlawful refusal to hire will not be used against them in any manner.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in West Jefferson, Alabama, copies of the attached notice marked "Appendix B."⁴ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent Sullivan, Long & Hagerty's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

¹ Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁴ See fn. 3.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT attempt to cause or cause the layoffs of our members because of their engagement in internal union politics or other protected concerted activities.

WE WILL NOT in any like or related manner restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL inform Sullivan, Long & Hagerty that we are not requesting the layoff of employee Billy Blazer and his supporters named hereunder and will send a copy of this letter to each of the unlawfully laid-off employees and will notify each of them in writing that their engagement in internal union politics and other protected concerted activities will not be used against them in any manner.

WE WILL make whole jointly and severally with Sullivan, Long & Hagerty members Billy Blazer, Joseph Ballard, Hugh Gaines, Denford Harper, John Mason, Ricky Rutherford, Gerald Teat, Eddie Monk, and David Young for all loss of wages and benefits sustained by them with interest and will notify each of them in writing of this and that their engagement in internal union politics or other protected concerted activities will not be used against them in any manner.

BOILERMAKERS LOCAL LODGE 108

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT lay off or refuse to hire employees because of their engagement in internal union politics or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind our unlawful layoff of employees Billy Blazer, Joseph Ballard, Hugh Gaines, Denford Harper, John Mason, Ricky Rutherford, Gerald Teat, Eddie Monk, and David Young and offer them full reinstatement to their former positions if they still exist or to substantially equivalent ones if they exist and will make them whole jointly and severally with Boilermakers Local Lodge 108 for all loss of wages and benefits sustained by them by reason of the unlawful layoffs, with interest.

WE WILL offer to hire Billy Blazer to the position for which he was referred to us in October 1988, or to a substantially equivalent position if this position no longer exists, and will make him whole for all loss of wages and benefits sustained by him as a result of our unlawful refusal to hire him with interest.

WE WILL remove from our files any references to the unlawful layoffs of the employees above and the unlawful refusal to rehire Billy Blazer in October 1988, and will inform each of them, respectively, in writing that this has been done and that the unlawful layoffs and, in the case of Billy Blazer also the unlawful refusal to rehire, will not be used against them in any manner because of their engagement in internal union politics or other protected concerted activities.

SULLIVAN, LONG & HAGERTY